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**IN THE UNITED STATES DISTRICT COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

ANTONIO S. CAMACHO ) CIVIL CASE NO. 05-0043  
Plaintiff-Appellee, )  
vs. )  
COMMONWEALTH OF THE )  
NORTHERN MARIANA ISLANDS, )  
DEPARTMENT OF PUBLIC LANDS, )  
successor to the Marianas Public Lands )  
Authority, and DEPARTMENT OF )  
PUBLIC WORKS, )  
Defendants-Appellants. )  
OPPOSITION TO CERTIFICATION  
AND MOTION FOR APPELLEE TO  
PAY FOR PORTIONS OF  
TRANSCRIPT AND CROSS-  
MOTION FOR DISMISSAL OF  
APPEAL  
Judge: Alex R. Munson  
Date : April 5, 2007  
Time: 9:00 a.m.  
)

Plaintiff-Appellee (“Mr. Camacho”), by and through counsel, hereby offers his Opposition to Defendants-Appellants’ Motion for costs of portions of the transcript. Furthermore, Mr. Camacho hereby moves this honorable Court to dismiss the Appeal filed by Defendants-Appellees (“the CNMI”) with prejudice for their failure to meet deadlines set by the Deputy Clerk of the Ninth Circuit Court of Appeals in the Time Scheduling Order and general disregard for the procedure to be followed as outlined in the Ninth Circuit’s Appellate rules.

## I. Introduction.

On January 8, 2007, the CNMI filed their Notice of Appeal. According to 9<sup>th</sup> Cir. R. 10-3.1(a), the CNMI had ten (10) days to serve a notice upon Mr. Camacho of what (if any) portions of the transcript of the proceeding the CNMI would be ordering from the District Court Clerk of Courts. The CNMI never did so.<sup>1</sup>

Thereafter, Mr. Camacho was to return notice to the CNMI of what portions of the transcript (if any) he thought were necessary for the prosecution of this appeal according to 9<sup>th</sup> Cir. R. 10-3.1(b). However, since Mr. Camacho never received the initial notice from the CNMI of what portions it was going to order, he never had the opportunity to determine if the CNMI would order some, all or none of the portions that Mr. Camacho thought necessary.

Having skipped the essential initial steps in the process, on February 26, 2007, the CNMI filed and served a copy of its Transcript Designation and Ordering Form. This form was filed unilaterally, without giving Mr. Camacho any opportunity to order the portions of the transcript that he thought necessary.<sup>2</sup> This is very significant because under the Ninth Circuit Rules, an appellee cannot independently designate portions of the transcript. The appellee must go through the appellant. Only one form is submitted and the appellant controls that form.

<sup>1</sup> See Declaration of George L. Hasselback a copy of which is attached hereto as "Exhibit A" at paragraph 1.

<sup>2</sup> Exhibit A at paragraph 1

Counsel for Mr. Camacho informed counsel for the CNMI of this error and suggested that the CNMI agree to file an amended Transcript Designation and Ordering Form.<sup>3</sup> Counsel for the CNMI refused.<sup>4</sup>

Thereafter, on March 9, 2007, the CNMI further compounded its error and further departed from the 9<sup>th</sup> Circuit Rules of Appellate procedure by filing a document entitled Certification Under Ninth Circuit Rule 10-3.1(d) and Motion For Appellee To Pay For Portions Of The Transcript. Again, Mr. Camacho has been given no opportunity to order the portions of the transcript that he deems necessary.<sup>5</sup>

The CNMI has ignored the Rules of Appellate Procedure, left Mr. Camacho entirely out of the process of designating portions of the transcript to be transcribed and failed to meet deadlines set by the Rules and the Time Schedule Order. Therefore, this appeal should be dismissed with prejudice.

## II. Argument.

The CNMI has not complied with the Ninth Circuit Rules of Appellate Procedure. Additionally, when this fact was pointed out and Mr. Camacho offered to cooperate in correcting this non-compliance to no detriment of the CNMI, his offer was rebuffed and the CNMI continued in its pattern of non-compliance. To this day, the CNMI refuses to follow the rules and therefore should not be allowed to continue to prosecute this Appeal.

<sup>3</sup> *Id* at paragraph 3.

<sup>4</sup> *Id* at paragraph 3.

<sup>5</sup> *Id* at paragraph 4.

1       **A. This Appeal Should Be Dismissed.**

2           Because it has ignored both the Rules of Appealallate Procedure and the deadlines set in  
3 the Time Scheduling Order and because it has refused to take reasonable steps to correct this  
4 situation, the CNMI's appeal should be immediately dismissed with prejudice.  
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7       **1. The CNMI Has Ignored The Rules Of Appellate Procedure.**

8           The CNMI has completely ignore the proper procedure for certification of the record on  
9 appeal. The proper procedure for an appellant to follow is to first inform the appellee as to  
10 what, if any, sections of the trial transcript it will order from the Clerk of Courts at the District  
11 Court. 9<sup>th</sup> Cir. R. 10-3.1(a). That way, the appellee can scrutinize this list and determine if it  
12 wants to order any further sections. 9<sup>th</sup> Cir. R. 10-3.1(b). Then, the appellant orders all  
13 sections so designated by filing a single Transcript Designation and Ordering Form. 9<sup>th</sup> Cir. R.  
14 10-3.1. Notably, there is no provision in the rules for anyone but appellant to file that form.  
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17           Here, the CNMI never notified Mr. Camacho of what portions it was to order.<sup>6</sup> It  
18 simply filed a Transcript Designation and Ordering Form.<sup>7</sup> When Mr. Camacho asked that the  
19 CNMI file an amended form, he was rebuffed and this instant Motion filed. The CNMI has not  
20 complied with the Rules and has steadfastly refused to take accountability for this failure and  
21 correct the problem. Therefore, this appeal should be dismissed.  
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24       **2. The CNMI Has Failed To Meet Deadlines Set By The Time Scheduling Order.**

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28       <sup>6</sup> Exhibit A at 2.

7 Exhibit A at 2.

1        If its disregard of the text of the Rules was not enough, the CNMI is in violation of the  
2 Time Scheduling Order issued by the Ninth Circuit Clerk of Court. This Order explicitly set  
3 out the deadlines by which the actions mandated by the rules were to be taken. This Order  
4 warned that “[f]ailure of the appellant to comply with the Time Schedule Order **will result in**  
5 **automatic dismissal of the appeal**” under “9<sup>th</sup> Cir. R. 42-1.” Time Scheduling Order at 2. The  
6 CNMI missed its first deadline.<sup>8</sup> The appeal should be dismissed.  
7

8

9        Furthermore, this failure prevented Mr. Camacho from having any input as to what  
10 portions of the transcript will be made part of the record. There is no mechanism for the  
11 appellee to independently order portions of the transcript. The CNMI was supposed to order  
12 all portions requested by all parties and fight about who pays for what independently. Instead,  
13 it ignored the rules and Mr. Camacho has no way to correct this error.  
14

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16        **3. The CNMI Refused An Offer To Correct These Failures Short Of Dismissal.**

17        Finally, it bears mention that the CNMI was given a chance to correct these failures  
18 without facing dismissal of its appeal. Mr. Camacho’s attorneys not only informed the CNMI  
19 of its errors, but offered to allow the CNMI to correct them without seeking any sanction.  
20 Instead of taking this “no harm-no foul” offer, the CNMI persisted in its erroneous course of  
21 action and filed the instant Motion. It has ignored the rules and through what is apparently  
22 institutional hubris, refused to admit that it has made any mistake or take accountability for its  
23 actions. For the aforementioned reasons, this appeal should be dismissed immediately.  
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27        <sup>8</sup> Even though the Time Scheduling Order was not filed until two days before  
28 the first deadline, the CNMI was on notice of this deadline under the Rules  
and should have met it. A delay in notification to Mr. Camacho may have been  
warranted, or a request for an extension. However, the CNMI has done  
neither.

1  
2 ***B. Alternatively, The CNMI Should File An Amended Transcript Designation And Order***  
3 ***Form And Should Have Costs And Attorney Fees For The Instant Motion Taxed Against It.***

4       If this Court is disinclined to dismiss this appeal, it should instead order that the CNMI  
5 back-up and start the process over again, but this time do it right. It should amend its  
6 Transcript Designation and Ordering Form and include the sections that Mr. Camacho has  
7 requested. Furthermore, it should not profit from the delay and expense it has forced upon Mr.  
8 Camacho by its failure to follow procedure and should pay his costs and attorney fees in this  
9 Motion.

10  
11 ***C. The CNMI Should Pay For All Portions Of The Transcript Requested By Mr. Camacho.***

12       Finally, the CNMI should pay for the portions of the transcript that have been requested  
13 by Mr. Camacho. The CNMI has offered no authority as to the assertions that it made in  
14 reaching the conclusion that these portions of the transcript were “unnecessary.” First, the  
15 portions appellee seeks to include are needed with regard to the jurisdiction issue. While it is  
16 facially true that this appeal does ask whether or not there was federal question jurisdiction, the  
17 CNMI obscures the underlying question that will have to be answered and that question is  
18 whether Mr. Camacho first exhausted state procedures before proceeding to Federal Court.  
19 Second, the prevention of the Hearing Officer testifying that the CNMI also challenges will be  
20 shown to be harmless error because of who the CNMI did have testify and the subjects of their  
21 testimony assuming agruendo that it was error to prevent the Hearing Officer from testifying.  
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25 **1. Exhaustion of State Remedies Will Be In Issue**  
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1           That question is did Mr. Camacho exhaust his avenues for CNMI administrative relief.  
2 That question will concern what Mr. Camacho did and did not do in the course of this  
3 administrative appeal; a subject upon which he testified in trial. Additionally, the defense  
4 appraiser Mitch Aaron and DPL Deputy Secretary Ramon Salas both testified regarding the  
5 administrative appeal process through which Mr. Camacho went. This testimony will be  
6 necessary to determine the ultimate question of "did Mr. Camacho exhaust state remedies?"  
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9           **2. The Testimony of the Hearing Officer Was Unnecessary**

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11           The Court precluded the testimony of the Hearing Officer because it was equivalent to  
12 calling a judge to explain a decision. The CNMI has appealed this ruling. The portions of the  
13 transcript that Mr. Camacho seek to have included in the record will show that the Hearing  
14 Officer's testimony was unnecessary. The CNMI was able to present the same evidence to the  
15 jury that it could have had the Hearing Officer testified. Mr. Camacho believes the decision to  
16 preclude the Hearing Officer from testifying was correct but even if it was not, the transcript  
17 portions that Mr. Camacho seeks to have included will show that an error was harmless error.  
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20           **III. Conclusion.**

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22           This appeal should be dismissed because the CNMI has ignored the Rules of Appellate  
23 Procedure for the Ninth Circuit. This appeal should be dismissed because the CNMI has failed  
24 to meet deadlines set by the Ninth Circuit in its Time Scheduling Order. This appeal should be  
25 dismissed because the CNMI has refused to acknowledge these errors and make any  
26 corrections.  
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Alternatively, the CNMI should be made to correct its mistakes and pay Mr. Camacho his attorney fees and costs so unnecessarily incurred.

Dated: March 28, 2007

Respectfully submitted,

O'CONNOR BERMAN DOTT & BANES  
Attorneys for Plaintiff Antonio S. Camacho

By: \_\_\_\_\_ /s/  
Michael W. Dotts (F0150)